

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-138039-02
Date:
October 15, 2002

LEGEND

Corporation =

Subsidiary =

State =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated July 9, 2002, and subsequent correspondence, requesting a ruling that the Service grant Corporation an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to elect to treat Subsidiary as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code.

Facts

According to the information submitted, Corporation is a corporation incorporated under the laws of State on Date 1 and has elected to be taxed as an S corporation effective on the date of its incorporation. Subsidiary was purchased in its entirety by Corporation on Date 2. It is represented that Corporation intended to treat Subsidiary as a QSub effective Date 2. However, Corporation inadvertently failed to timely file the proper election.

Applicable Law

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(a)(1) generally provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(3)(B) defines a QSub as any domestic corporation that is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by an S corporation, and the S corporation elects to treat the corporation as a QSub.

A parent S corporation makes a QSub election with respect to a subsidiary by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center. The election may be effective on the date the Form 8869 is filed or up to two months and 15 days prior to the filing of the form, provided that date is not before the parent's first taxable year beginning after December 31, 1996, and that the subsidiary otherwise qualifies as a QSub for the entire period for which the retroactive relief is in effect. If a valid QSub election is made, the subsidiary is not treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of the QSub are treated as assets, liabilities, and items of income, deduction, and credit of the parent S corporation.

Pursuant to § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

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Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301-9100-2.

Conclusion

Based solely on the facts and the representations submitted, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, Corporation is granted an extension of time of 60 days from the date of this letter to file a Form 8869 to elect to treat Subsidiary as a QSub effective Date 2. A copy of this letter should be attached to the election.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding whether Corporation is a valid S corporation or whether Subsidiary is otherwise a valid QSub for federal tax purposes.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to Corporation's authorized representative.

Sincerely yours,

/s/

Heather Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes